

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: NATIONAL PRESCRIPTION</b>	)	<b>CASE NO. 1:17-MD-2804</b>
<b>OPIATE LITIGATION</b>	)	
	)	<b>SPECIAL MASTER COHEN</b>
<b>THIS DOCUMENT RELATES TO:</b>	)	
<b>“All Cases”</b>	)	
	)	<b>DISCOVERY RULING NO. 14, PART 23</b>
	)	<b>REGARDING WALMART’S</b>
	)	<b>PRIVILEGE CLAIMS</b>

**AGENDA ITEM 306**

During Track Three discovery, defendant Walmart withheld production of certain documents based on attorney-client privilege. Plaintiffs took issue with a number of those decisions, and the parties engaged in a productive meet-and-confer process that narrowed the number of disputed documents. Plaintiffs requested *in camera* review of sixteen of the remaining disputed documents. Walmart submitted the disputed documents to the Special Master for *in camera* review and both parties submitted a chart summarizing their arguments regarding each contested document. Walmart also submitted a letter brief detailing its arguments in support of privilege and other supporting documents. Having considered these submissions carefully, the Special Master now rules on the challenged documents.

**I. Legal Standards.**

The Special Master has applied the legal standards and authorities set out in **all** prior “Discovery Rulings No. 14, Part x,” and incorporates them by reference.<sup>1</sup> *See, e.g., Zigler v.*

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<sup>1</sup> *See, e.g.,* docket nos. 1321, 1353, 1359, 1380, 1387, 1395, 1498, 1593, 1610, and 1666.

*Allstate Ins. Co.*, 2007 WL 1087607 at \*1 (N.D. Ohio Apr. 9, 2007) (a “communication is not privileged simply because it is made by or to a person who happens to be an attorney. To be privileged, the communication must have the *primary* purpose of soliciting legal, rather than business, advice.”) (internal quotation marks and citations omitted, emphasis in original); *see also Fed. Trade Comm’n v. Abbvie, Inc.*, 2015 WL 8623076 at \*9 (E.D. Pa. Dec. 14, 2015) (“attorney-client privilege does not apply . . . if the client seeks regulatory advice for a business purpose”). Also, when asserting attorney-client privilege, “[t]he burden of establishing the existence of the privilege rests with the person asserting it.” *United States v. Dakota*, 197 F.3d 821 at 825 (6<sup>th</sup> Cir. 2000). *See also* docket no. 3584 at 1 (“The burden is on the proponent to prove that the documents are privileged; and to be privileged, the communication must have the primary purpose of soliciting or receiving legal, as opposed to business, advice. That line is sometimes very difficult to draw when . . . [a company] operates in a heavily regulated business and regulatory compliance advice from in-house counsel is therefore part of [the company’s] day-to-day business operations.”). “Claims of attorney-client privilege are ‘narrowly construed because [the privilege] reduces the amount of information discoverable during the course of a lawsuit.’” *In re Columbia/HCA*, 293 F.3d 289 at 294 (quoting *United States v. Collins*, 128 F.3d 313, 320 (6<sup>th</sup> Cir. 1997)).

## II. Rulings.

WMT PRIV 00004069		Privilege designation sustained.
WMT PRIV 00004103		Sustained.
WMT PRIV 00004168		Overruled.
WMT PRIV 00004182		Sustained.
WMT_PRIV_00004227		Request to withhold entire document overruled; proposed redactions on pages 4227_001-003 sustained.
WMT PRIV 00004228		Sustained.

WMT PRIV 00004272		Redactions sustained.
WMT PRIV 00004289		Sustained.
WMT PRIV 00004301		Sustained.
WMT PRIV 00004303		Redactions sustained.
WMT PRIV 00004308		Sustained.
WMT PRIV 00004374		Sustained.
WMT PRIV 00004465		Sustained.
WMT PRIV 00004538		Sustained.
WMT PRIV 00004630		Request to withhold entire document overruled; proposed redactions on page 4630 003 sustained.
WMT PRIV 00004806		Redactions sustained.

### **III. Objections.**

Any party choosing to object to any aspect of this Ruling must do so on or before March 18, 2021.

**RESPECTFULLY SUBMITTED,**

/s/ David R. Cohen  
**David R. Cohen**  
**Special Master**

**Dated: March 11, 2021**